

REMARKS/ARGUMENTS

This Amendment is being filed in response to the Final Office Action mailed January 15, 2010, which has been reviewed and carefully considered.

Reconsideration and allowance of the present application in view of the amendments made above and the remarks to follow are respectfully requested.

Claims 1, 3-19 are pending in the application. Claim 1 is an independent claim. Claim 2 is canceled herein, without prejudice. The Applicants respectfully reserve the right to reintroduce subject matter deleted herein, either at a later time during the prosecution of this application or any continuing applications. Claims 16-19 are added by this amendment.

The Applicants have amended the specification and drawings to correct obvious typographic errors noted upon review of the present application. With regard to the drawings, FIG. 2a is amended herein to properly indicate the vacuum gauge 8 which is described in the present application with regard to FIGs. 2a, 2b. For example, the present application provides (emphasis added) "FIGS. 2a, b show a cross-sectional view, bottom view, respectively, of a second embodiment of a device according to the invention ... The housing comprises a circumferential recess 14 connected to a vacuum gauge 8 and a vacuum outlet 12, an emission window 9 and a circumferential edge 15." FIGs. 2b, 3a, 3b are similarly amended for consistency with the specification of the present application. Consideration and entrance of the amendments to the specification and drawings is respectfully requested.

In the Final Office Action, claims 1, 2, and 6-14 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,261,310 to Neuberger ("Neuberger"). Claim 3 is rejected under 35 U.S.C. §103(a) as being unpatentable over Neuberger in view U.S. Patent Publication No. 2002/0022871 to Grahn ("Grahn"). Claim 5 is rejected under 35 U.S.C. §103(a) as being unpatentable over Neuberger in view of U.S. Patent No. 6,325,792 to Swinger ("Swinger"). Claim 15 is rejected under 35 U.S.C. §103(a) as being unpatentable over Neuberger in view of U.S. Patent No. 6,254,597 to Rizoio ("Rizoio"). These rejections are respectfully traversed. It is respectfully submitted that claims 1-19 are allowable over Neuberger alone and in view of any combination of Grahn, Swinger and Rizoio for at least the following reasons.

Neuberger shows a laser treatment system that can be used in a clinical environment (see, Neuberger, FIG. 3, cited in the Final Office Acton and abstract).

It is undisputed that the Neuberger does not teach, disclose or suggest the pressure gage being located within the housing (See, Final Office Action, page 3, numbered paragraph 6.)

However, the Final Office Action takes a position that "[t]he placement of this device is regarded as an obvious design choice." This position is respectfully traversed.

It is respectfully submitted that the Applicants have provided a description of a specific advantage of placement of the pressure gage within the recess that is not taught, disclosed or suggested by Neuberger.

Particularly, it is the Applicants which discovered that "it is safer to measure the pressure at the exact location where it is to be known, to prevent the risk of e.g. a blocking of the vacuum outlet between the (circumferential) recess and the vacuum gauge 8. This would simulate an incorrect actual pressure inside the recess, and lead to possibly dangerous situations." (E.g., see, the present application, page 10, lines 19-23.) As admitted by the Final Office Action, Neuberger does not teach, disclose or suggest this advantageous arrangement.

It is respectfully submitted that the apparatus of claim 1 is not anticipated or made obvious by the teachings of Neuberger. For example, Neuberger does not teach, disclose or suggest, an apparatus that amongst other patentable elements, comprises (illustrative emphasis added) "a pressure gauge in the recess for measuring a pressure inside the recess; and a control means connected to the pressure gauge and to the source of electromagnetic radiation, the control means preventing the source of electromagnetic radiation from emitting electromagnetic radiation when the pressure measured by the pressure gauge within the recess is higher than a predetermined threshold value" as recited in claim 1. Each of Grahn, Swinger and Rizoiu are introduced for allegedly showing elements of the dependent claims and as such, do nothing to cure the deficiencies in Neuberger.

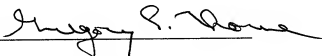
Based on the foregoing, the Applicants respectfully submit that independent claim 1 is patentable over Neuberger alone and in view of any combination of Grahn, Swinger and Rizoiu and notice to this effect is earnestly solicited. Claims 2-19 each depend from claim

1 and accordingly are allowable for at least this reason as well as for the separately patentable elements contained in each of the claims. Accordingly, separate consideration of each of the dependent claims is respectfully requested.

In addition, Applicants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

Applicants have made a diligent and sincere effort to place this application in condition for immediate allowance and notice to this effect is earnestly solicited.

Respectfully submitted,

By 

Gregory L. Thorne, Reg. 39,398
Attorney for Applicant(s)
March 17, 2010

Enclosure: Replacement drawing sheet (2 sheets including FIGs. 2a, 2b, 3a, 3b)

THORNE & HALAJIAN, LLP

Applied Technology Center
111 West Main Street
Bay Shore, NY 11706
Tel: (631) 665-5139
Fax: (631) 665-5101